SUPREME COURT, U. S.

SEP 29 1975

MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-329

ROBERT KAUFMAN,

Petitioner,

v.

JAMES R. DUMPSON, Administrator of the Human Resources Administration of the City of New York,

Respondent.

MEMORANDUM IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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ELLEN KRAMER SAWYER,
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The petition herein is without merit. No substantial constitutional question is presented.

Petitioner's due process objections were

examined by the Appellate Division of the New York Supreme Court which found petitioner's administrative hearing to have proceeded in accordance with the rules of law. Upon petitioner's taking an appeal as of right, the New York Court of Appeals on January 20, 1975, granted respondent's motion to dismiss on the ground that no substantial constitutional question was involved. That Court adhered to this decision in its denial on June 4, 1975 of petitioner's motion for reargument and reconsideration. On August 4, 1975 the Appellate Division denied petitioner's motion to reargue and reconsider its earlier refusal to grant leave to appeal to the New York Court of Appeals.

A glance at the record will reveal that petitioner's due process claims are without merit and not supported by the evidence. Nor does petitioner's dismissal from the department con-

stitute excessive punishment under New York law (Matter of Pell, 34 NY 2d 222 [1974]) or the Eighth Amendment. As to petitioner's charge that matter not in evidence was considered, it was perfectly proper for the hearing officer to have considered, with regard to the appropriate punishment, the memos in petitioner's personal file concerning his instances of prior insubordination with former supervisors and the official reprimand after a prior disciplinary hearing. Matter of Pell, 34 NY 2d 222 (1974). Moreover, the general rule is that an administrative proceeding is not bound to the strict rules of evidence applicable in court proceedings. Matter of Sowa v. Looney, 23 NY 2d 329 (1968). All material and reliable evidence is admissible in disciplinary hearings to achieve the public interest in reaching an informed result. Matter of Sowa v. Looney, supra, at pp. 333. This rule of law, dictated by public policy, has never

been held to violate a constitutional right.

CONCLUSION

The petition should be denied.

September 15, 1975.

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